

**PROPOSED NEW PROPERTY TAX RULES – WELFARE EXEMPTION
INTERESTED PARTIES MEETING – MARCH 16, 2005**

AGENDA

- I. INTRODUCTIONS**
- II. OVERVIEW OF BOARD'S RULEMAKING PROCEDURE**
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DISTRIBUTION OF BOARD STAFF'S DRAFT RULES**

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WELFARE PROPERTY TAX RULES
Rules 140, 141, 142, and 143

Date	Description of Task
September 17, 2004	Board to announce rulemaking project for four new property tax rules pertaining to the welfare exemption, seeking comments from interested parties.
October 15, 2004	Deadline for interested parties to submit comments or suggestions regarding project subject areas.
January 14, 2005	Staff to announce interested parties meeting to discuss key issues relating to rules.
February 24, 2005	Information on staff's position for key issues to be discussed at the March 16, 2005 interested parties meeting.
March 4, 2005	Deadline for interested parties to submit comments or suggestions regarding project subject areas.
March 16, 2005	Interested parties meeting to discuss key issues relating to low-income housing.
Late March	Staff to distribute draft rules.
Mid-April 2005	Deadline for interested parties to submit comments to staff regarding draft rules.
Early-May 2005	Staff to release an agenda matrix, summarizing suggestions and comments, for the interested parties meeting.
Early-May 2005	Staff to meet with interested parties to discuss proposed changes to the rules.
Mid-May 2005	Deadline for interested parties to submit final comments to staff regarding pending issues (comments are limited to those items discussed at the meeting).
June 30, 2005	Staff's formal presentation of the proposed rules for adoption by the Board.

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ISSUES FOR DISCUSSION

At the interested parties meeting on March 16, 2005, we will address the eight issues listed below with respect to the requirements for the welfare exemption for low-income housing properties including those owned and operated by a limited partnership in which the managing general partner is an eligible nonprofit organization.

ISSUE 1

Whether properties without government financing that are awarded federal low-income housing tax credits and operating under regulatory agreements that restrict a portion of the property for rental to lower income housing continue to be eligible for exemption after the period in which the property received tax credits has expired.

Staff Position

Properties are eligible for exemption for the period of time the regulatory agreement is in effect, provided that the government agency which executed the regulatory agreement continues its oversight to ensure that the property is properly maintained and rented to lower income households and that the low-income housing property is in compliance with the terms of the regulatory agreement.

Staff's Tentative Language for Draft Rule

Property is presumed to be subject to federal low-income housing tax credits² for the period of time that all or any portion of the property is subject to a regulatory agreement or recorded deed restriction which restricts the property's use for rental to lower income households even if the term of the property owner's receipt of the tax credits has expired, provided that the government agency that is a party to the regulatory agreement continues to monitor the property's compliance with the terms of the regulatory agreement. In order to qualify for the welfare exemption for low-income housing, all low-income housing properties including those owned by limited partnerships with a qualifying nonprofit managing general partner: (1) must have either federal low-income housing tax credits or government financing; and (2) must have either a recorded deed restriction or a regulatory agreement which is recorded in the county in which the property is located, the purpose of which is to ensure government oversight that the properties are properly maintained and rented to lower income households.

¹ The language set forth in this document does not reflect or represent the position of the Board or any Board member.

² "Federal low-income housing tax credits" means state low-income housing tax credits or federal low-income housing tax credits under section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.

ISSUE 2

Whether low-income housing properties without tax credits that previously had government loans continue to be eligible for exemption after the loans have been refinanced or paid in full when all or a portion of the property continues to be restricted for rental to lower-income households under a regulatory agreement.

Staff's Position

Properties are eligible for exemption for the period of time the regulatory agreement is in effect, provided that the government agency which executed the regulatory agreement continues its oversight to ensure that the property is properly maintained and rented to lower income households and that the low-income housing property is in compliance with the terms of the regulatory agreement.

Staff's Tentative Language for Draft Rule

Property is presumed to be subject to government financing for the period of time that all or any portion of the property is subject to a regulatory agreement or recorded deed restriction which restricts the property's use for rental to lower income households even if the government financing is refinanced or paid-in-full, provided that the government agency that is a party to the regulatory agreement continues to monitor the property's compliance with the terms of the regulatory agreement. In order to qualify for the welfare exemption for low-income housing, all low-income housing properties including those owned by limited partnerships with a qualifying managing general partner: (1) must have either federal low-income housing tax credits or government financing; and (2) must have either a recorded deed restriction or a regulatory agreement which is recorded in the county in which the property is located, the purpose of which is to ensure government oversight that the properties are properly maintained and rented to lower income households.

ISSUE 3

Whether federally-insured or federally-guaranteed loans on lower income housing properties constitute government financing under section 214, subd. (g)(1)(A).

Staff's Position

Federally-insured or guaranteed loans constitute government financing, provided that either a recorded deed restriction or a regulatory agreement restricts all or a portion of the property for rental to lower income households for the duration of the financing.

Staff's Tentative Language for Draft Rule

"Government financing" means financing or financial assistance from a local, state or federal government agency used for the acquisition, rehabilitation, development, or operation of the low-income housing property in the form of: (1) tax-exempt mortgage revenue bonds; (2) general obligation bonds; (3) local, state or federal loans; (4) local, state or federal grants; and (5) any loan insured or guaranteed by the federal government (HUD) for the duration of the financing.

ISSUE 4

Whether the exemption on low-income housing properties should be limited to the stated percentage specified in the regulatory agreement or recorded deed restriction that the property owner is required to restrict for use as rental to lower income households.

Staff's Position

The percentage of units specified in the regulatory agreement or recorded deed restriction that is restricted for rental to lower income households are the units eligible for exemption.

Staff's Tentative Language for Draft Rule

The welfare exemption may be granted up to the percentage of units specified in the regulatory agreement or deed restriction that are restricted for use as rental to lower income households, provided that such units are actually occupied by lower income households or held available for rental to lower income households if such units are not rented on the lien date.

ISSUE 5

Whether multiple regulatory agreements for a single lower income housing project may be combined to determine the total number of dwelling units eligible for exemption.

Staff's Position

Where there are multiple regulatory agreements for a single project, the agreements may be combined to determine the percentage of units eligible for exemption.

Staff's Tentative Language for Draft Rule

Multiple regulatory agreements, which restrict the use of particular units for rental to lower income households may be combined to determine the percentage of total units eligible for the exemption of the property.

ISSUE 6

Whether Section 8 HUD (tenant vouchers or project-based vouchers) rental assistance constitutes government financing under section 214, subd. (g)(1)(A).

Staff's Position

Section 8 tenant based vouchers do not constitute government financing. Staff is researching the issue of whether "project-based" Section 8 funding constitutes government financing.

Staff's Tentative Language for Draft Rule

"Government financing" means financing or financial assistance from a local, state or federal government agency used for the acquisition, rehabilitation, development, or operation of the low-income housing property in the form of: (1) tax-exempt mortgage revenue bonds; (2) general obligation bonds; (3) local, state or federal loans; (4) local, state or federal grants; and (5) any loan insured or guaranteed by the federal government (HUD). "Government financing" does not include the sole receipt of Section 8 tenant based voucher rental assistance from lower income households.

"Government financing" may include Section 8 project-based federal funding when a public housing agency contracts with an owner of low-income housing property, including those owned by a limited partnership in which the managing general partner is an eligible nonprofit organization, for a term of ten or more years to subsidize the property owner for renting specific units to lower income households.

ISSUE 7

Whether the requirements with respect to the management authority and duties of a managing general partner should be strengthened beyond those currently required and identified on claim form BOE 267-L1 and BOE 277-L1.

Staff's Position

The managing general partner of the limited partnership that owns the low-income housing property must actually manage and operate the low-income housing property, which includes rental of units, maintenance, and repair, or if it chooses to delegate such duties to a property management agent, the managing general partner must employ, control and oversee the property management agent's performance in managing and operating the property, and the managing general partner must maintain records and documents evidencing each duty it performs related to the management and operation of the low-income housing property and the charitable services and benefits provided to the low-income housing tenants.

Staff's Tentative Language for Draft Rule

1. A "managing general partner" is a general partner that:
 - (a) is a nonprofit corporation, meeting the requirements of Revenue and Taxation Code section 214, designated in the limited partnership agreement as the "managing general partner" of the limited partnership;
 - (b) has more than a "de minimis interest" in the limited partnership's profits and losses; "De minimis interest" means less than one percent;
 - (c) has "material participation" in the control, management, and direction of the limited partnership's business (defined in 2. below); and
 - (d) is organized and operated exclusively for a "charitable purpose" (defined 5. below).

2. "Material participation" means that the limited partnership agreement provides that the managing general partner has the following rights, powers, and duties, and the managing general partner actually exercises such rights and powers and performs such duties regularly and consistently, including, but not limited to:

- (a) holds an equal vote with other general partners in all the "major decisions" of the limited partnership business (defined in 3. below); and
- (b) performs "substantial management duties" (defined in 4. below).

3. "Major decisions" means those acts that may be done only with the consent of the all of the general partners, as specified in the limited partnership agreement, including, but not limited to:

- (a) borrowing money in the limited partnership's name to finance the purchase or renovation of partnership properties;
- (b) acquiring, assigning, or disposing of any ownership interest partnership property;
- (c) prepaying, in whole or in part, refinancing, or increasing, modifying or extending any partnership loan obligation; and,
- (d) developing, constructing, or renovating partnership property.

4. "Substantial management duties" means that the limited partnership agreement requires that the managing general partner manage and operate the low-income housing property owned by the limited partnership, including, but not limited to:

- (a) rental of units, maintenance, repair, and employing and overseeing the work of a property management agent if such duties are performed by the property management agent, which the managing general partner actually performs on a regular and consistent basis; and
- (b) employs and oversees persons necessary to provide services for the management and operation of the low-income housing property.

5. Charitable purposes. A nonprofit corporation that is the managing general partner of a limited partnership is deemed to be organized and operated exclusively for charitable purposes, provided that:

- (a) the nonprofit corporation ensures that charitable services or benefits are provided to the low-income housing tenants such as providing or referral to vocational training and educational programs, childcare and after school programs, cultural activities, and counseling; and
- (b) the nonprofit corporation does not have officers, directors or employees that are also officers, directors or employees of the for-profit general partners or limited partners of the limited partnership.

6. The managing general partner must maintain records and documents evidencing each duty it performs related to the management and operation of the low-income housing property and the charitable services and benefits provided to the low-income housing tenants as discussed above in this regulation, including, but not limited to, the limited partnership's:
 - (a) books and records;
 - (b) bank accounts;
 - (c) tax returns;
 - (d) budgets and financial reports;
 - (e) reports required by the lender;
 - (f) documents related to the construction or rehabilitation of real property;
 - (g) legal documents such as contracts, deeds, notes, leases, and deeds of trust;
 - (h) documents related to complying with government regulations and filings;
 - (i) documents related to property insurance;
 - (j) documents related to property inspections;
 - (k) documents related to charitable services provided; and
 - (l) documents related to the transmittal of information from the managing general partner to the partnership.
7. Substitution of Managing General Partner. A limited partnership in which the managing general partner is an eligible nonprofit corporation that has qualified for the welfare exemption for low-income housing may substitute its managing general partner without losing its exemption provided that:
 - (a) the limited partnership agreement authorizes the withdrawal of the existing managing general partner for the substitute managing general partner on the same effective date;
 - (b) the substitute managing general partner meets all of the requirements set forth in this regulation (1. – 6. above and 8. below); and
 - (c) the substitute managing general partner files for and receives a supplemental clearance certificate from the State Board of Equalization.
8. Certification Requirements. The managing general partner, as an eligible nonprofit organization, files for and receives a Supplemental Clearance Certificate for Managing General Partner from the Board which demonstrates that the property meets the qualifications as provided in section 214. As part of the filing requirement for supplemental clearance certificate as well as for exemption claim forms, the managing general partner certifies that the limited partnership agreement provides for rights, powers, and duties outlined in this regulation and that the managing general partner actually exercises such rights and powers, and performs such duties on a consistent and regular basis. The managing general partner files claim forms; however, certification must be made by all partners of the limited partnership.

ISSUE 8

Whether section 214, subd. (g)(2)(B) requires owners to charge lower rents than those prescribed by statute (Health and Safety Code) or the regulatory agreement for the property.

Staff's Position

Section 214, subd. (g)(2)(B) does not require lower rents than those required by the regulatory agreement or the Health and Safety Code.

Staff's Tentative Language for Draft Rule

The limited partnership is not required to rent the units in the low-income housing property for an amount lower than the amount prescribed by section 50053, or, to the extent that the regulatory agreement conflicts with section 50053, the rents are not required to be lower than those prescribed by the regulatory agreement.